

54. (new): The tank according to claim 22 wherein said leg means includes a leg.

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### **REMARKS**

Claims 22-31, and 42-55 are pending in this application. Claims 1-21, and 32-41 have been cancelled, without prejudice. Claims 42-54 are new. Claims 22, 25, 26, 30, 42, and 43 are independent. Applicant submits an additional payment of \$60 (\$42 plus \$18) to cover the extra claim fees (previously paid for 21 total claims with 5 independent claims; currently pending are 23 claims with 6 independent claims).

Applicant thanks the Examiner for the allowance of claims 22-31. Applicant herewith submits a Substitute Specification marked-up to show changes made relative to the immediate prior version. The Substitute Specification does not include any new matter. In accordance with the Revised Format, no clean version of the Substitute Specification accompanies this filing. Applicant also submits supplemental Drawings, which do not include new matter. Support for supplemental Drawings Figures 16-17 arises from page 8 of the originally filed specification.

### **Claim Rejections – 35 U.S.C. Section 102**

Claims 32, 35-37, 40 and 41 were rejected under 35 U.S.C. § 102 as being anticipated by U. S. Patent No. 4,915,296 Matsumoto et al. As far as the claims have been cancelled, the rejection of those claims is now moot and withdrawal thereof is earnestly sought.

Moreover, Matsumoto et al. does not anticipate applicants' invention as described in unexamined claims 42-51. The invention as presented in claim 42 is represented, formerly being dependent claim 39 which was deemed allowable by the Examiner if rewritten in independent form

including all of the limitations of the base claim. Accordingly, claim 42 is now presented in allowable form consistent with the Examiner's review.

The invention as presented in independent claim 43 pertains to a non circulating tank for use with a liquid heating vessel of a hydronic radiant heating system. The heating vessel has a flue for release of exhaust. The tank includes liquid holding means for holding liquid utilized with the heating system, and aperture means for receiving the flue which extends therethrough. The aperture means is defined by the liquid holding means.

The apparatus shown in Matsumoto et al. is not non-circulating. Moreover, Matsumoto et al. does not include an aperture means for receiving the flue which extends therethrough. Since it does not include every claimed feature, Matsumoto et al. does not anticipate Applicant's invention. Additionally, U.S. Patent No. 4,921,166 to Matsumoto et al. ("Matsumoto '166) also does not include every claimed feature. Matsumoto '166 is not non-circulating. Further, while Matsumoto '166 includes an exhaust passage 42, it does not include an aperture means for receiving a flue which extends therethrough.

Because Matsumoto et al., (and Matsumoto '166) fails to disclose every feature of the invention as presented in claim 43, it cannot anticipate that invention. Dependent claim 44 pertains to the tank according to claim 43 wherein the aperture means includes an aperture having a diameter greater than the diameter of the flue of the heating vessel. Such further aspect is also lacking in Matsumoto et al. and all other references. Accordingly, dependent claim 44, together with all other claims depending from claim 43, are not anticipated by Matsumoto et al. (or Matsumoto '166).

#### **Claim Rejections – 35 U.S.C. Section 103**


Claim 38 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Matsumoto et al. in view of Cornell, Jr. (2,115,706). As far as claim 38 has been cancelled, the rejection of that claim is now moot, and withdrawal thereof is earnestly sought. With regard to the unexamined claims 43-51, as noted previously, Matsumoto et al. (and Matsumoto '166) does not teach each of the features of the base independent claim 43, including an aperture means for receiving a flue which extends therethrough. Cornell, Jr. does not include such feature. For this and other reasons, one of ordinary skill in the art would have no reason to even consider Cornell Jr., and even when confronted with that reference would find no suggestion that it is beneficial to create the claimed invention or how to go about it. For all the foregoing reasons, applicants' invention as presented in the unexamined claims is allowable.

CONCLUSION

Applicant respectfully submits that all outstanding objections and rejections have been addressed and are now either overcome or moot. Applicant further submits that all claims pending in this application are patentable over the prior art made of record and not relied upon. Reconsideration and withdrawal of those objections and rejections is respectfully requested.

Applicant's undersigned attorney may be reached by telephone at (715) 835-5232 or by facsimile at (715) 835-9890. All correspondence should be directed to the below listed address.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Anthony J. Bourget', is written over a horizontal line.

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I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on May 21, 2003.

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Date